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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Situation in East Timor

Note by the secretariat

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Introduction

1. At its forty-fifth session, the Sub-Commission adopted resolution 1993/12, entitled "Situation in East Timor", in which, inter alia, it decided to consider at its forty-sixth session the situation pertaining to human rights and fundamental freedoms in East Timor, and for that purpose requested the secretariat to transmit to it all relevant information received.

2. The present note by the secretariat, prepared in compliance with this request, contains an update on the good offices activities of the Secretary-General, as well as pertinent information provided by the Government of Portugal and information received from Amnesty International.

3. The attention of the Sub-Commission is also drawn to the report of the Secretary-General on the situation in East Timor (E/CN.4/1994/61), which was submitted to the Commission on Human Rights at its fiftieth session, and to the reports of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1994/26), the Working Group on Arbitrary Detention (E/CN.4/1994/27), the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1994/7) and the Special Rapporteur on torture or other form of cruel, inhuman or degrading punishment (E/CN.4/1994/31), which the Commission on Human Rights also had before it at its fiftieth session and which refer to the situation in East Timor within the terms of their respective mandates.

4. In addition, it may be recalled that on 9 March 1994 the Chairman of the fiftieth session of the Commission on Human Rights made a statement, agreed to by consensus by the Commission, on the situation of human rights in East Timor.

I. UPDATE ON THE GOOD OFFICES ACTIVITIES OF THE SECRETARY-GENERAL CONCERNING THE QUESTION OF EAST TIMOR

5. In an effort to promote a political solution to the question of East Timor, the Governments of Indonesia and Portugal have for some time now been conducting consultations under the auspices of the Secretary-General. Since 1992, the Secretary-General has convened four rounds of substantive discussions between the Foreign Ministers of the two countries. In addition, numerous meetings of the Permanent Representatives of the two Governments to the United Nations have been held with the help of senior aides of the Secretary-General. It will be recalled that the focus of these talks has thus far been on promoting modest confidence-building measures to be undertaken by both sides with the aim of improving the atmosphere of the discussions and ameliorating the human rights situation in East Timor.

6. At the last two rounds of talks, held on 17 September 1993 in New York and on 6 May 1994 at Geneva, there has been an improvement in the atmosphere of the dialogue, and efforts are continuing to encourage both sides to take measures of practical significance for the East Timorese people, which would pave the way for an eventual discussion of the core issue with a view to reaching a just, comprehensive and internationally acceptable solution to the

question of East Timor. While more needs to be done in this respect, the Secretary-General is hopeful that some of the steps taken by both sides will also promote confidence and goodwill between the parties.

7. At the third round of ministerial talks, held on 17 September 1993 in New York, the two Ministers concurred on the need to promote respect for human rights in all their indivisible aspects (civil, political, economic, social and cultural) and the fundamental freedoms in East Timor. They reaffirmed the importance of implementing the recommendations contained in the consensus statement of the Commission on Human Rights of 4 March 1992, and the need for further facilitating access to East Timor, inter alia, by United Nations, humanitarian and human rights organizations. They also agreed to continue to promote a balanced exchange of visits by journalists and personalities from their respective countries. The Secretary-General reiterated his intention to continue to follow closely the human rights situation in East Timor in the spirit of the consensus statement of the Commission on Human Rights of 4 March 1992. The Ministers also noted the Secretary-General's intention to carry out contacts as deemed useful in his efforts to assist in the solution of the question. In January 1994, the Secretary-General dispatched a mission to Portugal, Indonesia, East Timor and Australia to conduct detailed discussions with the Governments of Portugal and Indonesia on various possibilities for advancing the discussions, and to consult with East Timorese groups and personalities representing various trends of opinion.

8. These preparatory efforts provided the necessary input for the fourth ministerial meeting, held at Geneva on 6 May 1994. The statement issued at the conclusion of the talks reflected, as regards human rights, the main points contained in the consensus statement made in March 1994 by the Chairman of the fiftieth session of the Commission on Human Rights. It took note of the intention of the Government of Indonesia to continue its investigation in order to account fully for the persons dead and missing as the result of the violent incident which took place in Dili on 12 November 1991; expressed the Ministers' concurrence on the need to ensure the humane treatment of those East Timorese in custody, to respect fully their rights, and to take further appropriate measures aimed at the early release of those imprisoned; welcomed the invitation extended by the Government of Indonesia to the Special Rapporteur on extrajudicial, summary or arbitrary executions of the Commission on Human Rights to visit East Timor; and deemed it important that the Government continue to cooperate with other relevant thematic special rapporteurs and/or working groups of the Commission and that they be invited to visit East Timor whenever necessary. It noted the increased access to East Timor for United Nations, human rights and humanitarian organizations, as well as journalists, and considered that such access and the visits to East Timor by East Timorese living abroad and by East Timorese to Portugal should be continued and expanded.

9. The Secretary-General welcomed the positive atmosphere in which the talks had been held and the restraint displayed by both sides in international forums; expressed his belief that, as an important contribution to the ongoing efforts under his auspices, the dialogue among East Timorese should be encouraged, and stated that he would explore "appropriate efforts to be undertaken towards facilitating an all-inclusive intra-Timorese dialogue", an initiative that both Ministers took note of.

10. In addition, the Foreign Ministers of Portugal and Indonesia informed the Secretary-General of their readiness to meet with leading East Timorese supporters and opponents of integration, respectively. They also requested the Secretary-General to identify a series of issues for consideration by them in advance of the fifth round of talks to be held in the first half of January 1995 at Geneva, including possible avenues towards achieving a just, comprehensive and internationally acceptable solution.

II. INFORMATION PROVIDED BY THE GOVERNMENT OF PORTUGAL

11. The Permanent Mission of Portugal to the United Nations Office at Geneva provided the secretariat with a document entitled "Comments by the Government of Portugal on the adoption, by the Commission on Human Rights, of a Chairman's consensus statement on the human rights situation in East Timor", dated 14 March 1994, which reads as follows:

> "The Commission on Human Rights, at its fiftieth session, agreed by consensus to a statement by the Chairman on the human rights situation in East Timor.
>
> "Portugal, during this year in an observer capacity to the Commission, started the process that led to the consensus statement. Together with the other partners of the European Union, Portugal participated actively in the negotiations involving Indonesia and other member States of the Commission, from which resulted the text finally agreed to.
>
> "The Government of Portugal expresses its satisfaction at the statement now adopted, containing dispositions that can lead to an effective improvement of the prevailing situation of human rights in East Timor. It should be emphasized, in this regard, that Indonesia, as a member of the Commission and having subscribed to the above-mentioned statement, is politically and morally bound to its implementation.
>
> "The Chairman's statement contains provisions relating to the investigation of the fate of the East Timorese who are still unaccounted for as a result of the events of 12 November 1991 and about the circumstances surrounding them, which were never clarified; to the taking of measures aimed at an early release of those convicted; to a greater access to the territory; and to increased cooperation by Indonesia with the Commission on Human Rights and its subsidiary organs, as a result, in particular, of the forthcoming visit to East Timor by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the invitations to be addressed to other relevant thematic special rapporteurs and/or working groups to visit the territory when necessary for the fulfilment of their duties.
>
> "The international community has the right and the duty to demand that the provisions of this statement will be duly implemented. On the other hand, we hope that the spirit that prevailed during this process will be conducive to achieving concrete progress in the current negotiations, being held under the auspices of the Secretary-General of the United Nations, with a view to achieving a just, comprehensive and internationally acceptable settlement of the question of East Timor,

with full respect for the legitimate interests and aspirations of the East Timorese, in conformity with the principles embodied in the Charter of the United Nations."

III. INFORMATION RECEIVED FROM AMNESTY INTERNATIONAL, A NON-GOVERNMENTAL ORGANIZATION IN CONSULTATIVE STATUS (CATEGORY II)

12. On 16 February 1994 Amnesty International published a report entitled "Indonesia and East Timor: Fact and Fiction, Implementing the Recommendations of the United Nations Commission on Human Rights". The report reviewed the Indonesian Government's record in implementing recommendations made by the Commission on Human Rights in its resolution 1993/97 on East Timor. Its conclusions were the following:

"The Government has failed to provide sufficient information about the fate and identity of those killed and reported 'disappeared' after the Santa Cruz massacre. This failure is symptomatic of a deeper problem: there is no effective avenue for the prompt, thorough and impartial investigation of serious human rights violations, either in Indonesia or East Timor.

"Notwithstanding some prosecutions of military and police personnel in 1992, those ultimately responsible for the Santa Cruz massacre have not yet been brought to justice and the serious discrepancy in the sentencing of soldiers and peaceful civilian protesters has not been redressed. This is an example of a more general problem: the perpetrators of human rights violations, whether in East Timor or Indonesia itself, are seldom brought to justice, and when they are, the punishment is not commensurate with the severity of the crimes they have committed.

"The Government has not released East Timorese prisoners of conscience arrested after the massacre, and has continued to detain and harass suspected opponents of Indonesian rule. Some 20 East Timorese remain in prison for political crimes, serving sentences of up to life imprisonment imposed in unfair trials. But the problem of political imprisonment is not confined to East Timor. An estimated 400 prisoners are currently serving sentences for political crimes throughout Indonesia and East Timor. Scores of others are currently in detention awaiting trial on political charges, including 21 human rights activists who have been arrested within the past three months.

"The Government has begun to implement only one of the 11 concrete recommendations made by the United Nations Special Rapporteur on torture in his 1992 report, with the appointment of a 25-member National Human Rights Commission in late 1993. It is too early to judge whether the new body will meet United Nations standards - as enumerated in the Principles relating to the status of national institutions for the promotion and protection of human rights - but available information about its mandate, composition, and legal status, has given rise to concern that it may not.

"Despite some improvement in the past two years, restrictions continue to be imposed on access to East Timor by international human

rights and humanitarian organizations, including Amnesty International and the International Committee of the Red Cross. Government restrictions and repression also constitute significant obstacles to effective human rights monitoring by domestic groups.

"The Government's acceptance of visits by representatives of the office of the United Nations Secretary-General, and its recent invitation to the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions to visit East Timor in 1994, are positive steps. But the Government has a long way to go before it can be said to have complied with the Commission's recommendation that it invite all four United Nations human rights monitoring mechanisms to visit East Timor."

13. In May 1994 Amnesty International informed the Centre for Human Rights that over the previous few weeks at least 11 inhabitants of East Timor had been arrested by the Indonesian military forces in Dili and in Malang, allegedly for their non-violent political activities. One of the persons allegedly detained was José Antonio Neves, a leading member of a clandestine, pro-independence East Timorese organization and a student of theology in Malang, East Java, who was arrested on 19 May 1994. The Indonesian military authorities have repeatedly denied the information about his arrest. It was reported that Mr. Neves had recently returned to East Timor and had gathered information on alleged human rights violations there which he intended to make public upon his return to Malang. Since fears were expressed that José Antonio Neves and the other persons arrested in Dili might be subjected to torture or ill-treatment, the Special Rapporteur on the question of torture sent an urgent appeal in this connection to the Government of Indonesia on 24 May 1994. In June 1994 Amnesty International transmitted additional information on the case, according to which José Antonio Neves was being held at the police station (POLRES) in Malang, whereas three other detainees had been brought to trial at the Dili District Court.